

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fenkel	Team: Squad #6	CCRB Case #: 201803797	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/21/2017 1:52 PM	Location of Incident: Northeast corner of Gordon Street and Laurel Avenue	Precinct: 120	18 Mo. SOL 5/21/2019	EO SOL 5/21/2019	
Date/Time CV Reported Mon, 05/14/2018 1:05 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 05/14/2018 1:05 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Kyle Erickson	16014	957567	120 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Elmer Pastran	06851	956154	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kyle Erickson	Discourtesy: Police Officer Kyle Erickson spoke discourteously to § 87(2)(b)	[REDACTED]
B.POM Kyle Erickson	Abuse: Police Officer Kyle Erickson frisked § 87(2)(b)	[REDACTED]
C.POM Kyle Erickson	Abuse: Police Officer Kyle Erickson searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]

Case Summary

On May 14, 2018, an anonymous individual filed this complaint via the CCRB's online website on behalf of their friend, § 87(2)(b).

On November 21, 2017, at approximately 1:52 p.m., § 87(2)(b) was driving alone in the vicinity of Gordon Street and Laurel Avenue in Staten Island when he was pulled over by PO Kyle Erickson and PO Elmer Pastran, both of the 120th Precinct. § 87(2)(b) immediately exited his vehicle and PO Erickson allegedly ordered § 87(2)(b) to "get the fuck back in the car" (**Allegation A: Discourtesy**, § 87(2)(g)). PO Erickson ordered § 87(2)(b) to exit his vehicle, frisked him, and searched his vehicle (**Allegation B - C: Abuse of Authority**, § 87(2)(g)). PO Erickson recovered one pound of marijuana, two firearms, one magazine, one silencer, and multiple rounds of ammunition from § 87(2)(b)'s trunk.

§ 87(2)(b) was arrested for § 87(2)(b) (Board Review 01). § 87(2)(b) pled guilty to attempted criminal possession of a weapon in the second degree and was sentenced to five years imprisonment (Board Review 02).

There is no video evidence in this case.

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Kyle Erickson spoke discourteously to

§ 87(2)(b) (Board Review 03) testified that he was driving a gold § 87(2)(b) with custom window tints on all his windows except the front windshield. § 87(2)(b)'s window tints transmitted 16% of light. § 87(2)(b) parked in front of a bodega at the intersection of Laurel Avenue and Gordon Street and exited his vehicle to go inside. PO Erickson, who had pulled up behind § 87(2)(b)'s vehicle, exited his patrol car and ordered § 87(2)(b) to "get the fuck back in the car" and § 87(2)(b) complied.

PO Erickson (Board Review 04) testified he signaled for § 87(2)(b) to pull over after he observed excessively dark window tints on § 87(2)(b)'s front and rear driver's side and passenger's side windows. PO Erickson recognized § 87(2)(b)'s tints to be above the legal tint percentage because they were so dark he was unable to see inside of the vehicle. PO Erickson signaled for § 87(2)(b) to pull over and he immediately did so outside of a bodega. § 87(2)(b) abruptly exited his vehicle immediately after he pulled over. PO Erickson ordered § 87(2)(b) to "step back in the vehicle." PO Erickson could not recall if he issued § 87(2)(b) multiple orders before he complied. PO Erickson denied that he told § 87(2)(b) to "get the fuck back in the car" and denied using any profanity toward him.

PO Pastran (Board Review 05) consistently testified that § 87(2)(b) was pulled over for excessively dark window tints on his front and rear driver's side and passenger's side windows. § 87(2)(b) immediately exited his vehicle after he was pulled over and PO Erickson ordered him to return to his vehicle. § 87(2)(b) looked around momentarily before he complied. PO Pastran was unable to recall PO Erickson's exact words, but denied that PO Erickson ordered § 87(2)(b) to "get the fuck back in the car" and denied hearing PO Erickson use profanity.

Limited profanity, when used to maintain order in a stressful street encounter, does not constitute misconduct. NYPD v. White, DCT 78667/03 (Board Review 06).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: Police Officer Kyle Erickson frisked § 87(2)(b)
Allegation C – Abuse of Authority: Police Officer Kyle Erickson searched the vehicle in which § 87(2)(b) was an occupant.

An attorney was consulted regarding these allegations.

§ 87(2)(b) testified that PO Erickson and PO Pastran approached the on the driver's side and passenger's side of § 87(2)(b)'s vehicle, respectively, and § 87(2)(b) rolled down his front driver's side and front passenger's side windows. PO Erickson told § 87(2)(b) that his vehicle smelled like marijuana and § 87(2)(b) informed him that he smoked marijuana in this vehicle earlier that day. PO Erickson ordered § 87(2)(b) to exit his vehicle and § 87(2)(b) complied. PO Erickson patted § 87(2)(b) down along his arms, torso, and legs with negative results and began to search § 87(2)(b)'s vehicle, making his way from the front driver's seat to the trunk. Inside of the trunk, PO Erickson recovered a black backpack containing one pound of marijuana, two firearms, a magazine, and a silencer.

PO Erickson testified that he immediately smelled burnt marijuana upon approaching the driver's side of § 87(2)(b)'s vehicle. PO Erickson also observed granules of leafy green substance, recognized to be marijuana, and small plastic bags commonly used in the packaging of narcotics on the driver's side floor of § 87(2)(b)'s vehicle. PO Erickson told § 87(2)(b) that his vehicle smelled like marijuana and § 87(2)(b) acknowledged that he smoked marijuana in his vehicle earlier that day. PO Erickson ordered § 87(2)(b) to exit his vehicle and he complied. PO Erickson conducted a search of § 87(2)(b)'s entire vehicle, including the trunk. PO Erickson was unable to recall the exact details of his search. Inside of the trunk, PO Erickson found a bag underneath the spare tire flap. PO Erickson opened the bag and discovered a Ziploc bag containing one pound of marijuana, two firearms, a silencer, and over 100 rounds of live ammunition. After the discovery of this contraband, PO Erickson placed § 87(2)(b) under arrest and frisked and searched him. PO Erickson denied that he ever conducted a frisk of § 87(2)(b) prior to this point.

PO Pastran testified that he and PO Erickson both approached on the driver's side of § 87(2)(b)'s vehicle, where he immediately smelled a strong odor of both smoked and unsmoked marijuana. PO Pastran additionally observed a green leafy substance recognized as marijuana scattered on § 87(2)(b)'s driver's side floor and front passenger's seat. Both PO Erickson and PO Pastran informed § 87(2)(b) that his vehicle smelled like marijuana. PO Pastran could not recall if § 87(2)(b) said anything in response to this. § 87(2)(b) was ordered to exit his vehicle and he complied. PO Erickson searched § 87(2)(b)'s vehicle and discovered one pound of marijuana, two firearms, a silencer, and over 100 rounds of live ammunition inside of § 87(2)(b)'s trunk. § 87(2)(b) was placed under arrest and subsequently frisked. PO Pastran denied that § 87(2)(b) was frisked prior to this point.

A property voucher (Board Review 07) prepared by PO Erickson documented that 11 Ziploc bags of marijuana were recovered from § 87(2)(b)'s vehicle.

The scent of marijuana emanating from a defendant's vehicle provides officers with probable cause to search the vehicle and its occupants. People v. Chestnut, 43 A.D. 2d 260 (Board Review 08).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 09).
- PO Erickson has been a member-of-service for three years and has been a subject in three CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complain was not suitable for mediation.
- A Notice of Claim Inquiry was submitted to the New York City Office of the Comptroller on November 1, 2018 and will be included in the case file upon its receipt (Board Review 10).

• § 87(2)(b)

Squad No.: #6

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date